IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6386 of 2006

Date of Decision : 03.08.2007

J.S. Dahiya

..... Petitioner

Versus

Chatar Singh and others.

.... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. S.C. Kapoor, Senior Advocate with
Mr. S.S. Dahiya, Advocate,
for the petitioner.

Mr. Rakesh Garg, Advocate,
for respondent No.1.

S.D. Anand, J.

This revision petition is directed against the order dated 08.11.2006 (Annexure P-7) vide which the learned Civil Judge (Senior Division), Sonepat (hereinafter referred to as the Trial Court), declined an application under Section 151 of the Code of Civil Procedure which had been preferred by the plaintiff-respondent No.1 to request the learned Trial Court to ignore the purported agreement, recorded in its order dated 25.01.2006. The further request made to the Court was to recall the said order and to proceed with the suit.

Facts occasioning the filing of the application aforementioned in the first instance. Plaintiff-respondent (Chatter Singh) filed a suit for the grant of a decree for specific performance of agreement dated 13.02.1998

which had been executed by the defendant-petitioner to sell the plot under reference to him (plaintiff-respondent). Also applied for was the restraint of the Haryana Urban Development Authority and its Chief Administrator from transferring the relevant plot in the name of anyone other than the plaintiff-respondent.

On 25.01.2006, the counsel representing the plaintiff-respondent and the learned counsel for the defendant-petitioner (i.e. the contesting parties) appeared before the learned Trial Court and made the following statement:-

> "It is jointly stated that the dispute between the parties has been resolved and according to the compromise entered between the parties, the defendants except HUDA, which is not affected by the result of the litigation, shall pay a sum of Rs. 5,50,000/- to the plaintiff, who accepts the amount as a compromise between the parties and as a further measure to the full and final settlement of dispute between the parties, the plaintiff shall also withdraw criminal litigation against the defendant. The defendant shall also withdraw any other complaint pertaining to the disputed property against the plaintiff. It is prayed that the court fee affixed on the plaint be got refunded under section 21 of the Legal Services Authority Act to the plaintiff. In the circumstances, after the payment is made by a demand draft within a period of 15 days in favour of plaintiff, the plaintiff shall withdraw the present suit. Needless to repeat, all criminal cases, private complaint or FIR shall be got withdrawn by both the parties against each other within a period of 15 days."

In the light of that statement, the matter was adjourned to 14.02.2006 for compliance.

It was thereafter on 09.02.2006 that defendant-petitioner filed the impugned application under Section 151 C.P.C. for ignoring the purported agreement between the parties, as recorded in the Trial Court's order dated 25.01.2006, recalling the said order and for proceeding with the instant suit. The averment, made in the course thereof, was that the purported compromise was not valid inasmuch as the plaintiff-respondent was not a signatory thereto and he was even not present in the Court at the time it came to be recorded and that the impugned compromise is not in conformity with the provisions of Order 23 Rule 3 of the Code of Civil Procedure which pre-suppose the coming into being of a compromise in writing in the first instance before the terms thereof can be recorded by a Court as the foundation of a consensual order. The further averment made was that "the said purported agreement resulted from a condition of serious mental pressure and, was, therefore, not voluntarily one by the applicant."

In response to the application, the plaintiff-respondent averred that the impugned compromise is completely in accord with the law and was voluntary in character. It was further averred that the duly authorized statement made by the counsel for the parties made a valid compromise.

The learned Trial Court negatived the plea and raised by the defendant-petitioner vide the impugned order dated 08.11.2006.

The defendant-petitioner is in revision.

I have heard the learned counsel for the parties and have carefully perused the record.

The learned Senior Advocate, appearing on behalf of the

petitioner, raised the following pleas which, along with the judicial pronouncements relied upon in support thereof, may be noticed in the first instance.

a) In the light of the amended provision of Order 23 Rule 3 of the Code of Civil Procedure, the parties have to compulsively reduce the terms of the compromise into writing on their own and, thereafter, present it before the Court. In the present case, neither the plaintiff was present at the time the purported compromise came to be recorded nor did the parties present before the Court any compromise between them which may have been put into writing under the signatures of the parties.

Reliance, in support of the plea, was placed upon the following observations made by the Apex Court in (2006) 10 SCC, 788 (Som Dev and others versus Rati Ram and another):-

> "After the amendment of the Code of Civil Procedure by Act 104 of 1976, a compromise of a suit can be effected and the imprimature of the court obtained thereon leading to a decree only if the agreement or compromise presented in the court is in writing and signed by the parties and also by their counsel as per practice. In a case where one party sets up a compromise and the other denies it, the court can decide the question whether, as a matter of fact, there has been a compromise. But, when a compromise is to be recorded and a decree is to be passed, Rule 3 of Order 23 CPC insists that the terms of the compromise should be reduced to writing and signed by the parties. Therefore, after 1.2.1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of

> Order 23 CPC and unless a decree is passed in terms thereof, it may not be possible to recognize the same as a compromise decree. In the case on hand, a decree was passed on 10.10.1980 after the amendment of the Code and it was not in terms of Order 23 Rule 3 CPC. On the other hand, as the decree itself indicates, it was one on admission of a pre-existing arrangement."

The plea was resisted by the learned counsel for respondent No.1 by placing implicit reliance upon a judicial pronouncement rendered by the Apex Court in Pushpa Devi Bhagat (D) Th. LR.Smt. Sadhna Rai versus Rajinder Singh and others (2006(3) R.C.R. (Civil) 479).

On appraisal of the material obtaining on the file, in its relatability to the judicial pronouncements relied upon by the learned counsel for the parties, I am of the considered opinion that the petitioner is not on a firmer footing in the plea raised before this Court. Before proceeding further, it would be appropriate to notice that the impugned compromise bears the signatures of the learned counsel representing the contesting parties and there is no averment that the power of attorney executed by the parties in their favour had come to be withdrawn by the time they made that statement before the Court.

In Pushpa Devi Bhagat's case (supra), the Apex Court noticed all the relevant provisions and arrived at the conclusion that a consent decree passed by the Court on the basis of statement of their learned counsel is valid, even if no separate instrument of compromise had been drawn. While examining the connotation of words "signed by parties" appearing Order 23 Rule 1, the Apex Court observed that "Order 3 Rule 1 of CPC

provides that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. The proviso thereto makes it clear that the Court can, if it so desires, direct that such appearance shall be made by the party in person. Rule 4 provides that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment. Sub-rule (2) of Rule 4 provides that every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."

Furthermore, while considering the question whether the expression "signed by parties" would include signing by the pleader, the Apex Court noticed the following observation made by it in Byram Pestonji Gariwala Versus Union Bank of India (1992(1) SCC 31):-

> "30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or

the recognized agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislature intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognized and universally acclaimed common law tradition…..

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35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past…

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37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement of compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted….

38. Considering the traditionally recognized role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorized agents.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of is client…. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated."

[Emphasis supplied]"

The Apex Court, in the above judicial pronouncement, noticed that the above view in Byram Pestonji Gariwala's case (supra) was

reiterated in Jineshwardas Versus Jagrani (2003(4) RCR (Civil), 606.

Thereafter, the Apex Court proceeded to examine the connotation of expression of the expression "in writing". In that case, the respective statements of counsel for the parties had been recorded on oath in regard to the terms of the compromise. In that context, the Apex Court observed as under:-

> "If the terms of a compromise written on a paper in the form of an application or petition is considered as a compromise in writing, can it be said that the specific and categorical statements on oath recorded in writing by the court and duly read over and accepted to be correct by the person making the statement and signed by him, can be said to be not in writing? Obviously, No. We may also in this behalf refer to Section 3 of the Evidence Act which defines a document as any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording the matter. The statements recorded by the Court will, therefore, amount to a compromise in writing.
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> 20. Consequently, the statements of the parties or their counsel, recorded by the court and duly signed by the persons making the statements, would be `statement in writing signed by the parties'. The court, however, has to satisfy itself that the terms of the compromise are lawful. In this case we find from the trial court records that the second defendant had executed a vakalatnama empowering her counsel Sri Dinesh Garg to act

> for her in respect of the suit and also to enter into any compromise. Hence there can be no doubt that Sri Dinesh Garg was authorized by the second defendant to enter into a compromise. We also find that the counsel for the plaintiffs and counsel for the defendants made solemn statements on oath before the trial Court specifying the terms of compromise, which were duly recorded in writing and signed by them. The requirements of the first part of Rule 3 of Order XXIII are fully satisfied in this case."

The reliance placed by the learned counsel for the petitioner upon Som Dev's case (supra) is not appropriate inasmuch as the facts and circumstances in that case were entirely different. That was a suit for the recovery of possession of the suit property in enforcement of a right of pre-emption. The plaintiff had raised a claim that half share in that property had been relinquished in his favour and that of his brother and by a named co-owner and the assignor of the contesting defendants and the said relinquishment had been recognized by the Court by decreeing the claim made by the preemptor and his brother. The plea raised thereby was that the preemptor having become a co-owner with the assignor of the contesting defendants, was entitled to raise a plea of pre-emption and recover possession of the property from the assignee of the other co-owner. The contention germane to that appeal, which was raised by the contesting defendants, was that a right had been created in the preemptor by the decree in the above civil suit which was based on a compromise and since decree purported to create a right in a property in which he had no pre-existing right, the compromise decree required registration in terms of Section 17(1)

of the Registration Act and that decree not having been registered, the preemptor was not entitled to enforce the alleged right of pre-emption as against the contesting defendants or their assignor, the other co-owner. The Trial Court held that the decree in that Civil Suit was enforceable even without registration as it was not hit by Section 17(1) of the Registration Act; that the said decree had recognized the right claimed by the plaintiff and in the circumstances, the plaintiff was entitled to a decree for possession from the assignee of the other co-owner in enforcement of his right of pre-emption. On appeal, the Lower Appellate Court affirmed the view of the Trial Court and held that what was involved in civil suit aforementioned was a family arrangement and since a bona fide family arrangement among the members of a family, in the larger sense of the term, did not require registration, no objection could be raised by the contesting defendants to the enforceability of the title claimed by the plaintiff. In second appeal, the appellants relied upon Bhoop Singh versus Ram Singh [(1995) 5 SCC 709] to argue that as the civil suit decree created rights in favour of the plaintiff in a property in which he had no pre-existing right, the decree required registration in order to become enforceable. The High Court held that the decree was based on a settlement which did not require registration. The Apex Court negatived the contention raised on behalf of the plaintiff that the ratio of the decision in Bhoop Singh's case (supra) required reconsideration. It also held that the decree did not create any title for the first time in the plaintiff and his brother and that it did not require registration in view of clause (vi) of Section 17(2) of the Registration Act, though it was a decree based on admission. Thus, the Apex Court was dealing with a case based upon entirely different facts and circumstances.

The observations made by the Apex Court in that case can, thus, safely be taken to be obiter-dicta and not ratio decidendi.

The above plea raised on behalf of the petitioner shall stand declined accordingly.

The learned counsel for the petitioner, then, argued that the impugned compromise could not be given effect to as it was unlawful in character. In that context, learned counsel pointed out that the compromise required the parties to withdraw the criminal litigation pending between them.

The plea deserves to be merely stated to be negatived. There is nothing unusual if the parties agree to buy peace by agreeing to drop a criminal litigation pending between them. In the absence of any material to the contrary, the assumption is that the complaints to be withdrawn pertained to offences which were, even otherwise, compoundable. In that view of things, it cannot be said that the impugned compromise was unlawful in any case.

There is a yet another facet of the controversy which requires to be noticed. On the own showing of the defendant-petitioner, he and his counsel were signatories to the impugned compromise. The further averment is that the compromise is bad because the plaintiff-respondent did not sign it. A party which is signatory to a compromise statement, along with its counsel, cannot be heard to raise such a plea on principle of estoppel, particularly when it is not the plaintiff-respondent who has raised a grievance. The plea shall stand negatived accordingly.

It was further argued by the learned counsel for the petitioner that the impugned compromise is bad because the presence of a lawyer

daughter of the plaintiff-respondent had been recorded initially, though her name was scored off later on. This, the argument proceeded, invalidates the whole compromise.

The learned counsel appears to be reading too much into the above circumstance. There is nothing unusual if the presence of a lawyer daughter of a party came to be recorded. On realizing the error of her not being either a party or a counsel, she must have requested for deletion of her name and that is what precisely appears to have been done by the Court. The deletion of that name in the above circumstances cannot, by any stretch of interpretation, be said to be sufficient to invalidate the impugned compromise.

In the light of the foregoing discussion, the petition is held to be devoid of merit and is ordered to be dismissed. The parties shall, however, bear their own costs of the cause.

August , 2007 (S.D. Anand)
vkd Judge